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8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**

10 JUAN MENDOZA and AGUSTIN) Case No. 07-CV-0056 BTM (POR)
11 FERNANDEZ, individually and on behalf of all)
12 other persons similarly situated and on behalf of) **DECLARATION OF JASON E. BAKER**
the general public,) **SUPPORTING JOINT MOTION FOR**
13) **APPROVAL OF SETTLEMENT AND**
Plaintiffs,) **STAY OF CLASS CLAIMS PENDING**
14) **RESOLUTION OF STATE COURT**
vs.) **ACTION**
15)
DIAMOND ENVIRONMENTAL SERVICES,)
16 LLC, a California limited liability company;) Hearing: TBD
ERIC DE JONG, an individual; and DOES 1) Time: TBD
17 through 100, inclusive,) Courtroom: 15
Defendants.) [NO ORAL ARGUMENT PER LOCAL
18) RULE]

19 I, Jason E. Baker, declare:

20 1. I am an attorney at law duly licensed to appear in this Court and am a named
21 partner with Keegan Macaluso & Baker, LLP, attorneys for Juan Mendoza, Agustin Fernandez,
22 Rafael Cervantes, Kevin Hernandez and the putative class members in this matter. I make this
23 declaration in support of the Joint Motion for Approval of the Settlement and Stay of Class Claims
24 Pending Resolution of the State Court Action.

25 2. There are two pending actions seeking class certification, economic damages and
26 injunctive relief on behalf of a putative class of Pumper Drivers employed by Defendants - this case
27 (hereinafter known as "*Mendoza*") and San Diego Superior Court Case No. 37-2007-00051019-CU-
28 OE-NC entitled *Kevin Hernandez and Raphael Cervantes v. Diamond Environmental Services, LLC*

Declaration of Jason E. Baker Supporting Motion For Settlement Approval And Stay of Class Claims

1 (hereinafter known as "*Hernandez*"). Both *Mendoza* and *Hernandez* arise from the same general
2 set of facts and circumstances and affect the same putative class.

3 3. This *Mendoza* matter was filed on December 11, 2006 in San Diego Superior Court.
4 Defendants removed *Mendoza* to federal court on January 9, 2007, based upon Plaintiffs' claims that
5 Defendants violated the Fair Labor Standards Act ("FLSA"). On March 1, 2007, Plaintiffs filed a
6 motion for leave to amend the complaint to eliminate any FLSA claims and a simultaneous motion
7 to remand *Mendoza* to San Diego Superior Court. Defendants only contested the motion to remand.
8 These motions are still pending. The *Mendoza* class is defined as: "all persons who were employed
9 as a "Pumper Driver" at any Diamond work site in the State of California (the "Class") during the
10 period commencing from December 11, 2002 up until the date of trial (the "Class Period")."

11 4. On February 10, 2007, Plaintiffs Kevin Hernandez and Raphael Cervantes filed the
12 *Hernandez* action in San Diego Superior Court, alleging the exact same claims as *Mendoza*, but
13 eliminating any FLSA claims. The *Hernandez* class is defined as: "all persons who were employed
14 as a "Pumper Driver" at any Diamond work site in the State of California (the "Class") during the
15 period commencing from February 10, 2003 up until the date of trial (the "Class Period").

16 5. Since the commencement of the litigation, class counsel and defense counsel have
17 worked diligently and cooperatively to analyze this case at an early time through significant informal
18 discovery and informal fact finding to investigate the factual and legal strengths and weaknesses of
19 this case, have reviewed and evaluated relevant documents, meet with their respective clients and
20 have engaged in extensive legal research and analysis regarding the Parties' respective positions on
21 the issues raised by the Complaint.

22 6. On June 27, 2007, the parties and their attorneys participated in a private mediation
23 before Michael J. Roberts, Esq. of ADR Services, Inc. for both the *Mendoza* and the *Hernandez*
24 matters. Attorney Roberts is an experienced, highly regarded mediator in San Diego County. Despite
25 mediation efforts covering more than ten hours that day, the parties did not settle the case that day,
26 but continued settlement negotiations and discussions thereafter. Since then, the parties have
27 reached an agreement within the same framework proposed by Mediator Roberts, with respect to all
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1 core settlement terms of both the *Mendoza* and *Hernandez* matters.

2 7. Attached hereto as Exhibit “A” is a true and correct copy of the settlement agreement
3 reached in the *Mendoza* matter. Attached hereto as Exhibit “B” is a true and correct copy of the
4 settlement agreement reached in the *Hernandez* matter.

5 8. The combined total value of the settlement of both *Mendoza* and *Hernandez* (if
6 approved) is approximately \$515,000, inclusive of all payments to class members, attorneys fees,
7 costs, and settlement administration, if all class members submit a valid and timely Proof of Claim
8 form. Additionally, I am informed and believe the putative class members have received a benefit
9 of approximately \$350,000 from a separate settlement of wage and hour claims through the United
10 States Department of Labor in or around December, 2006.

11 9. Under the terms of the parties’ settlement agreement in *Mendoza* (if approved),
12 Plaintiffs Juan Mendoza and Agustin Fernandez will each dismiss with prejudice their individual
13 claims in this action and each receive \$30,000, allocated as \$10,000 in full and final settlement of
14 their wage and hour claims and confidentiality and waiver of all other claims, known or unknown;
15 \$10,000 for incentive award for their efforts as class representatives for the putative class of Pumper
16 Drivers in the *Mendoza* matter and \$10,000 for an agreement not to seek future employment from
17 Defendants, or any affiliated company. Additionally, the class claims in *Mendoza* will be stayed
18 pending resolution of those claims in state court as part of the *Hernandez* matter.

19 10. Importantly, to facilitate settlement and not prejudice the putative *Mendoza* class, the
20 settlement agreement in the *Hernandez* action provides that the class period will begin on December
21 11, 2003, three years from the filing of the complaint in the earlier *Mendoza* case.

22 11. Based on my education, training and experience in representing plaintiffs in
23 connection with wage and hour matters, and based on my analysis of the facts in this case, I believe
24 this proposed settlement in *Mendoza* fairly compensates Plaintiffs Mendoza and Fernandez for their
25 claimed damages and efforts in pursuing these matters on behalf of the putative class.

26 12. Each of Plaintiffs Mendoza and Fernandez made significant contributions and were
27 instrumental to settlement of both the *Mendoza* and *Hernandez* matters. Each was willing to initially
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1 come forward and pursue a claim on behalf of the putative class(es). Similarly, each was willing to
2 spend significant time with Plaintiff's counsel developing both cases, reviewing documents,
3 interviewing witnesses and putative class members, including providing translation when necessary.
4 Plaintiffs *Mendoza* and *Fernandez* each participated in the mediation session, including preparation
5 therefor, including travel time and missed time from work. Plaintiff *Mendoza* was present at and
6 Plaintiff *Fernandez* was available by telephone for the Early Neutral Evaluation Conference with
7 Honorable Judge Louisa S. Porter. Without their contributions, neither settlement would likely have
8 come to fruition.

9 13. Based on my education, training and experience in representing plaintiffs in
10 connection with wage and hour matters, and based on my analysis of the facts in this case, I believe
11 this proposed settlement in *Mendoza* is fair and will not prejudice the putative class in either
12 *Mendoza* or *Hernandez* because the parties have already reached a settlement of the *Hernandez*
13 matter which, if approved, will include all putative class members of *Mendoza* and encompass
14 *Mendoza's* earlier class period. If the *Hernandez* settlement is rejected, the class members will still
15 have their day in court.

16 14. I believe this proposed settlement in *Mendoza* is fair in that both settlements were
17 reached through arm's-length bargaining between Plaintiffs and Defendants, who were all present
18 at the mediation session with Mediator Roberts, and had necessary translation services available.

19 15. I believe this proposed settlement in *Mendoza* is fair in that both settlements were
20 reached after appropriate investigation and informal discovery by counsel, after Plaintiffs and
21 Defendants exchanged and reviewed extensive documents on the claims and defenses and confirmed
22 through investigation efforts by the United States Department of Labor.

23 I declare under penalty of perjury under the laws of the state of California that the foregoing
24 is true and correct. Executed this 27th day of August, 2007 at San Diego, CA.

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26 By: s/Jason E. Baker
27 Jason E. Baker, Esq.
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